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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/939,938	08/27/2001	Kirsten Lambertsen	102964-2	4041

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[REDACTED] ART UNIT

[REDACTED] PAPER NUMBER

2672

DATE MAILED: 06/19/2003

3

Please find below and/or attached an Office communication concerning this application or proceeding.

DA

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	09/939,938	LAMBERTSEN, KIRSTEN
	<b>Examiner</b>	<b>Art Unit</b>
	Faranak Fouladi	2672

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 27 August 2001.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-13 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-13 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 27 August 2001 is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.
 

If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
  - a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2.
- 4) Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other:

### **DETAILED ACTION**

1. This action is responsive to communications: application, field on 08/27/01.
2. Claims 1-13 are pending in the case, with claims 1 and 6 being independent.
3. The present title of the application is "Virtual makeover system and method" (as originally filed).

### ***Drawings***

4. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because
  - reference character "10" has been used to designate both "system" in Fig. 1 and "View Product List for Feature Selected" in Fig. 2;
  - reference character "11" has been used to designate both "Product Database" in Fig. 1 and "Select Product" in Fig. 2;
  - reference character "12" has been used to designate both "Palette Database" in Fig. 1 and "View Colors/Style List" in Fig. 2;
  - reference character "13" has been used to designate both "Image Database" in Fig. 1 and "Select Color/Style" in Fig. 2;
  - reference character "15" has been used to designate both "Vendors" in Fig. 1 and "View Image With Product(s) Applied" in Fig. 2;
  - reference character "17" has been used to designate both "Service Providers" in Fig. 1 and "Add Products to Cart" in Fig. 2;

- reference character "18" has been used to designate both "Other Users" in Fig. 1 and "Send Palette to Other Users" in Fig. 2;

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

5. The drawings are objected to because reference character "16" has been used to designate both "Potential Buyers" in specification page 8 line 6 and "Save the Selected Product as a new Palette" in specification page 9 line 13.

6. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference sign(s) not mentioned in the description: "19" in Fig. 1; "16A" and "16 B" in Fig2; "20", "70", and "80" in Fig. 3; "31", "32", "33" and "34" in Fig 5.

.A proposed drawing correction, corrected drawings, or amendment to the specification to add the reference sign(s) in the description, are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

7. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: "50", "52" and "71". A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

***Specification***

8. The disclosure is objected to because of the following informalities: Page 11 line 23 of specification reads "The tools provided (Figure 2) allow the user...."; Figure 2 does not show those tools.

Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

9. Claim1-5 are rejected under 35 U.S.C. 102(e) as being anticipated by Rigg US 6,293,284 B1.

10. As per independent claim 1, "a makeover method, such method comprising the steps of: configuring a computer to receive a facial image (applicant admitted prior art, specification page 3 lines 12-15; applicant has stated "One of ordinary skill in the art will readily appreciate that several different methods and systems exist for uploading and viewing images, and that all known methods and systems can be used with the present invention.");

providing user-adjustable feature templates allowing the user to specify features on the facial image (Rigg disclose in col. 1 line37-40);

providing a catalog of beauty products enabling the user to specify particular products to apply to the specified features (Rigg disclose in col. 3 lines 6-10); and enabling a user to modify the image to form a made over facial image having the particular products applied to the specified features, thereby enabling the user to visualize an intended makeover (Rigg disclose in col. 3 lines 4-10).

11. As per dependent claim 2, "the method of claim 1, wherein the modified facial image shows the applied products in true color." Rigg disclose in col. 3 line 3. Rigg disclosed that the customer could provide input for her favorite color.

12. As per dependent claim 3, "the method of claim 1, wherein the facial image is an image of the user." Rigg disclose in col. 2 line 49-51.

13. As per dependent claim 4, "the method of claim 1, further comprising the step of storing the specified particular products as a palette for application to other or later images." Rigg disclose in col. 3 line 6-16. Rigg disclose a predetermined palette, which is made of the specified particular products of user's choice or consultant's choice. This predetermined palette is then applied to users image. Predetermined means that the palette had to be chosen and saved before the virtual trial in order to be applied to the digital image.

14. As per dependent claim 5, "the method of claim 1, further comprising the step of storing the specified particular products in a shopping cart, and enabling the user to purchase the items in the shopping cart." Rigg disclose in col. 3 line 17-22.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

15. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by US 5,854,850 Linford et al.

16. As per independent claim 6, "a method for outlining features in a digital photographic image, comprising: receiving a digital photographic image from a user; providing a plurality of movable shapes for outlining features in the digital photographic image, each movable shape comprising a plurality of lines connected by a plurality of points which together form the shape; enabling the user to select a point on the movable shape; enabling the user to move each selected point to outline a specific feature in the digital photographic image and thereby moving each line connected to the point moved by the user so as to form a new shape; displaying each new shaped formed by the user in connection with the outlined features in the photographic image; enabling the user to save each new shape in connection with

the photographic image." Linford disclose in col. 14 lines 34-60.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

17. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Linford as applied to claim 6 above, and further in view of Rigg US 6,293,284 B1 as applied to claim 1 above.

18. As per dependent claim 7, "the method of claim 6, further comprising: providing a product database of beauty products available for purchase, each beauty product being computer manipulable by the user such that specific beauty products can be applied to and displayed in connection with the outlined features of the photograph image; enabling the user to access the product database to apply beauty products to the outlined features of the photographic image; and enabling the user to select from the product database one or more beauty products available for purchase and to apply an image representative of the one or more products available for purchase in the photographic image."

Linford disclose all the limitations set forth in claim 6 but Linford does not teach the rest of limitations set forth in claim 7. Riggs on the other hand disclose a

product database of beauty products that are computer manipulable by the user in connection with the outlined features of the photographic image; and he also disclose a barcode symbol or an image for designating the product with the customer and finally Rigg's software for operating the system is based on program disclosed by Linford. It would have been obvious to an ordinary person skilled in the art at the time of invention to use all the features of the Linford program to define the size and shape of the facial parts to enable the user to do the ultimate manipulation and enhancement to the digital image.

19. As per dependent claim 8, "the method of claim 7, further comprising: enabling the user adjust the application of the beauty product to the photographic image." Rigg disclose in col. 3 line 4.

20. As per independent 9, "the method of claim 8, wherein the step of enabling the user to adjust the application of the beauty product to the photographic image comprises: enabling the user to select a desired width or opacity of the applied beauty product." Rigg disclose in col. 2 line 45-49. Rigg 's program does this by locating color requiring area and changing the shape and size of it to select the desirable width. Since Rigg's software is based on Linford's program this gives the user the ability to adjust the width of the applied product on the area.

21. As per dependent claim 10, "the method of claim 7, wherein the beauty products are selected from the group consisting of wigs, glasses, contacts, eye shadow, blush, eye liner, lipstick, lip liner, foundation, eye brow color, eye lashes, hair color, and combinations thereof." Since Rigg's software is based on Linford's program this gives

the user the ability to use and apply a wide variety of the beauty products including wigs or glasses on the user by using freehand draw mode, a curve mode and an undo mode, and also the combination draw tool used with any of the draw tools (Linford discloses in abstract).

22. As per dependent claim 11, "the method of claim 7, further comprising: enabling the user to search for a specific beauty product in the product database." Rigg disclose in abstract lines 10-14.

23. As per dependent claim 12, "the method of claim 7, further comprising: enabling the user to save the selected beauty products as a palette." Rigg disclose in abstract lines 12-14.

24. As per dependent 13, "the method of claim 12, further comprising: enabling the user to communicate the palette to other users." Rigg disclose in col. 3 lines 17-22.

### ***Conclusion***

**25.** Any this communication or earlier communications from the examiner should inquiry concerning be directed to **Faranak Fouladi** whose telephone number is **703-305-3223**. The examiner can normally be reached on Mon-Fri from 8:00-4:30.

**26.** If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Michael Razavi** can be reach at **703-305-4713**.

**27. Any response to this action should be mailed to:**

28. Commissioner of Patents and Trademarks

29. Washington, DC. 20231

Application/Control Number: 09/939,938  
Art Unit: 2672

Page 10

**30. Or faxed to: 703-872-9314 (for Technology Center 2600 only)**

31. Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal Drive, Arlington, VA, sixth-floor (Receptionist).

32. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Technology Center 2600 Customer Service Office whose telephone number is 703-306-0377.

**Faranak Fouladi-Semnani**  
**Patent Examiner**  
**Art Unit 2672**

*Jeffery A. Bries*  
JEFFERY BRIES  
PRIMARY EXAMINER